



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

CECW-P

AUG 24 2015

MEMORANDUM FOR COMMANDER, Northwestern Division

SUBJECT: Implementation Guidance for Section 4007 of the Water Resources Reform and Development Act (WRRDA) of 2014 – Northern Rockies Headwaters

1. Section 4007 of WRRDA 2014 authorizes the Secretary to conduct a study to determine the feasibility of carrying out projects for aquatic ecosystem restoration and flood risk reduction that will mitigate the impacts of extreme weather-related events, including floods and droughts, on communities, water users, and fish and wildlife located in and along the headwaters and tributaries of the Columbia, Missouri, and Yellowstone Rivers in Idaho and Montana. It provides that the study will, to the maximum extent possible, emphasize the protection and enhancement of natural riverine processes and will assess the individual and cumulative needs associated with floodplain restoration and reconnection; floodplain and riparian area protection through the use of conservation easements; instream flow restoration projects; fish passage improvements; channel migration zone mapping; and invasive weed management. In addition, it provides that the Secretary may carry out any project identified in a study under this authority in accordance with the criteria for projects carried out under Section 206 of the Water Resources Development Act (WRDA) of 1996 (33 U.S.C. 2330); Section 1135 of the WRDA of 1986 (33 U.S.C. 2309a); Section 104(a) of the River and Harbor Act of 1958 (33 U.S.C. 610(a)); or Section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s). Section 4007 also specifies that it does not invalidate, preempt, or create any exception to state water laws or rights, or to Federal or state permitted activities or agreements. A copy of Section 4007 is enclosed (Encl 1).

2. At such time that funds are specifically appropriated for a study under this authority, a feasibility study will be initiated in accordance with ER 1105-2-100 and other applicable planning regulations and will be cost shared 50% Federal and 50% non-Federal. Additional guidance may be requested from Corps Headquarters to address the initial scoping efforts, as well as the preparation, coordination and processing of a report. In carrying out these studies, the appropriate states and tribes will be consulted. Cooperative agreements will not be used to carry out this provision.

3. If it is determined, upon completion of the study, that the recommended project fits the criteria for projects carried out under a Continuing Authorities Program (CAP) authority specified in Section 4007, it may be converted to a CAP project under that authority for design and implementation in accordance with the procedures found in Appendix F of ER 1105-2-100, and funded under the appropriate named authority. The criteria presented in Appendix F of ER 1105-2-100 for each authority will be followed

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and the per project statutory Federal limit will apply. A study may also be considered for funding under one of the named CAP authorities in accordance with existing budgetary guidance. Projects meeting the criteria under Section 104(a) of the Rivers and Harbors Act of 1958 may also be considered for funding in accordance with the programmatic and budgetary policies associated with that Program.

4. If it is determined that the recommended project exceeds the criteria for the named CAP authorities, the project will be processed in accordance with the procedures for studies requiring specific authorization per Appendix H of ER 1105-2-100, including preparation of a Chief's Report for submission to Congress. In addition, the recommended project will be considered for inclusion in the annual report submitted to Congress pursuant to Section 7001 of WRRDA 2014, in accordance with the most recent guidance issued for Section 7001.

Encl

A handwritten signature in black ink, reading "Theodore A. Brown". The signature is fluid and cursive, with the first name "Theodore" being more prominent and the last name "Brown" following in a similar style.

THEODORE A. BROWN, P.E.
Chief, Planning and Policy Division
Directorate of Civil Works

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SEC. 4007. NORTHERN ROCKIES HEADWATERS.

(a) **IN GENERAL.**—The Secretary shall conduct a study to determine the feasibility of carrying out projects for aquatic ecosystem restoration and flood risk reduction that will mitigate the impacts of extreme weather events, including floods and droughts, on communities, water users, and fish and wildlife located in and along the headwaters of the Columbia, Missouri, and Yellowstone Rivers (including the tributaries of those rivers) in the states of Idaho and Montana.

(b) **INCLUSIONS.**—The study under subsection (a) shall, to the maximum extent practicable—

- (1) emphasize the protection and enhancement of natural riverine processes; and
- (2) assess the individual and cumulative needs associated with—
 - (A) floodplain restoration and reconnection;
 - (B) floodplain and riparian area protection through the use of conservation easements;
 - (C) instream flow restoration projects;
 - (D) fish passage improvements;
 - (E) channel migration zone mapping; and
 - (F) invasive weed management.

(c) **DISPOSITION.**—

(1) **IN GENERAL.**—The Secretary may carry out any project identified in the study pursuant to subsection (a) in accordance with the criteria for projects carried out under one of the following authorities:

- (A) Section 206 of the Water Resources Development Act of 1996 (33 U.S.C. 2330).
- (B) Section 1135 of the Water Resources Development Act of 1986 (33 U.S.C. 2309a).
- (C) Section 104(a) of the River and Harbor Act of 1958 (33 U.S.C. 610(a)).
- (D) Section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s).

(2) **REPORT.**—For each project that does not meet the criteria under paragraph (1), the Secretary shall include a recommendation relating to the project in the annual report submitted to Congress by the Secretary in accordance with section 7001.

(d) **COORDINATION.**—In carrying out this section, the Secretary—

- (1) shall consult and coordinate with the appropriate agency for each state and Indian tribe; and

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(2) may enter into cooperative agreements with those state or tribal agencies described in paragraph (1).

(e) LIMITATIONS.—Nothing in this section invalidates, preempts, or creates any exception to state water law, state water rights, or Federal or state permitted activities or agreements in the states of Idaho and Montana or any state containing tributaries to rivers in those states.